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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

DEREK WORDEN, Plaintiff and Respondent, v. STEPHANIE LYNN AGGAZZOTTI, Defendant and Appellant.	G030026 (Super. Ct. No. 00P000178) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Myron S. Brown, Judge. (Retired judge of the Orange Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Dismissed.

John R. Schilling for Defendant and Appellant.

Law Offices of Brian G. Saylin and Brian G. Saylin for Plaintiff and Respondent.

* * *

Stephanie Lynn Aggazzotti (Stephanie)[1] appeals from a so-called "partial judgment" awarding her child support of $5,500 per month and attorney fees and costs in

[1] We use the parties' first names for convenience and intend no disrespect. (*Nairne v. Jessop-Humblet* (2002) 101 Cal.App.4th 1124, 1126, fn. 1.)

the amount of $25,000. The partial judgment does not resolve issues of custody and visitation and therefore is not a final, appealable judgment. We decline to treat the appeal as a petition for writ of mandate. Accordingly, we dismiss the appeal for lack of appellate jurisdiction.

FACTS AND PROCEEDINGS IN THE TRIAL COURT

Stephanie is the mother of A.R., born in December 1999. Derek Worden (Derek) is A.R.'s father. Stephanie and Derek have never been married to each other.

In March 2000, Derek filed a petition to establish parental relationship. Stephanie's response to the petition sought legal and physical custody of A.R. with restricted visitation for Derek. In response to a blood test, Derek admitted he is A.R.'s father.

In November 2000, Stephanie brought an order to show cause seeking child support. In preparation for the hearing on the order to show cause, Stephanie sought financial information from Derek's employer by means of subpoena. She also sought financial records directly from Derek by means of a notice to appear and produce documents at the hearing and a deposition notice with a document production request. Derek moved to quash the subpoena and the notice to produce documents, and sought a protective order quashing his deposition and relieving him of any obligation to produce documents. In support of the motion, Derek submitted a declaration stating: "On many, many, many occasions I have informed [Stephanie] that I am willing to pay any amount necessary in child support in order to accommodate the reasonable needs of my daughter [A.R.]. [¶] . . . [¶] . . . I have on many occasions, throughout these proceedings, conceded the fact that I have made in excess of 1 million dollars over the last twelve months. [¶] . . . I have offered to pay any amount reasonably necessary to meet the reasonable needs of my child."

The trial court granted the motion to quash and the motion for a protective order based upon this issue admission: "(A) Plaintiff has an extraordinarily high income; (B) Plaintiff can pay any reasonable sum for child support; (C) Plaintiff will accede to any reasonable order this Court may make for child support even if it is in excess of the guideline amount so long as said award addresses the child's reasonable needs commensurate with Plaintiff's status as an extraordinarily high earner."

Stephanie's order to show cause was heard on December 18, 2000. On December 21, the court entered an interim order setting child support at $4,000 per month pending trial.

Before trial, Stephanie again sought to depose Derek to obtain financial information. The trial court granted Derek's motion to quash the notice of deposition.

Trial was conducted on May 17, 29, and 31, 2001. During closing argument, Stephanie's counsel asked the court to set child support "somewhere between the $4,800 and $5,800 [per month] which coincidental[ly] is the guideline number that's on less than a million dollars of income." The record shows, however, the trial court never made a guideline calculation of child support under Family Code section 4055.

On June 22, 2001, the trial court issued its ruling. With respect to child support, the court stated: "The court has reviewed the evidence presented by both parties. And while what follows is not an exhaustive reconstruction of the court's analysis, it is hoped that it will assist Respondent's counsel in his preparation of the court's findings in this regard. Pursuant to an earlier agreement, Petitioner has been paying four thousand dollars ($4000) per month. The court finds that said sum does not sufficiently address the child's reasonable needs. The residence of the Respondent and child is substandard and needs to be improved. The child has been through a series of highly stressful events and encounters. Hopefully, the child will flourish without professional intervention, but Respondent must have the financial ability to secure same [if] needed. The child needs to have access to educational and recreational activities. Mother has a baccalaureate degree

in psychology, but her present ability to earn is minimal. And again because of the stress that has been created by events beyond any control of the child, the child presently needs the stability of a mother that is present on a full time basis, at least for the present time. With these representative factors in mind, the court finds that the amount sufficient to address the child's needs is five thousand, five hundred dollars ($5,500) per month, said amount to commence June 01, 2001."

With respect to custody and visitation, the court stated it believed "the issues of custody and visitation were agreed upon by the parties." The court stated it had not yet ruled on the issue of extended visitation and requested that Derek prepare and submit "an itinerary of the two proposed visitations, together with a list of the parties that will be present."

Stephanie incurred about $65,000 in attorney fees and costs, of which Derek had paid $7,500 pursuant to an interim order entered April 17, 2001. In the June 22, 2001 ruling, the court ordered Derek to pay Stephanie's counsel an additional $25,000 in attorney fees and costs.

Stephanie's counsel prepared a form "Judgment (Uniform Parentage)" with the word "Partial" typed before the word "Judgment." The so-called "partial judgment" orders Derek to pay monthly child support of $5,500 and to pay $25,000 of Stephanie's attorney fees and costs. The box next to child custody and visitation is not checked, and the partial judgment does not include any order on child custody and visitation.

The so-called partial judgment was entered on October 16, 2001. Notice of entry of judgment was filed and served on October 23. On December 16, 2001, Stephanie filed a notice of appeal from the partial judgment.

On August 23, 2002, the court signed and entered (1) an order regarding child custody and (2) findings and order after hearing. These orders do not appear in the record; we take judicial notice of them on our own motion. The order regarding child

custody resolves child custody issues, which the trial court did not resolve in the partial judgment. The findings and order after hearing modified the amount of child support.

THE APPEAL IS DISMISSED FOR LACK OF APPELLATE JURISDICTION

Derek argues Stephanie's appeal should be dismissed because the partial judgment is not a final, appealable judgment or order.

The "one final judgment rule" provides that an appeal may be taken from a final judgment, but not an interlocutory judgment. (Code Civ. Proc., § 904.1, subd. (a)(1).) By definition, a judgment is the final determination of the rights of the parties. (Code Civ. Proc., § 577.) Thus, "an appeal cannot be taken from a judgment that fails to complete the disposition of all the causes of action between the parties even if the causes of action disposed of by the judgment have been ordered to be tried separately, or may be characterized as 'separate and independent' from those remaining." (*Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 743.) A judgment is final when it decides the rights and duties of the parties, terminates the litigation between the parties on the merits, and leaves no issue for future judicial determination except compliance with the judgment's terms. (*Sullivan v. Delta Air Lines, Inc.* (1997) 15 Cal.4th 288, 304; *Olson v. Cory* (1983) 35 Cal.3d 390, 399.)

The partial judgment in this case did not resolve issues of child custody and visitation, issues raised both by Derek's petition and by Stephanie's response. The trial court's ruling states "the issues of custody and visitation were agreed upon by the parties." But any such resolution does not appear in the partial judgment or elsewhere in the record on appeal, and the trial court ordered Derek to prepare and submit a proposed visitation schedule. The partial judgment leaves issues of custody and visitation to future judicial determination, and therefore is not a final, appealable determination of the parties' rights. (See *In re Marriage of Griffin* (1993) 15 Cal.App.4th 685, 689 [order in dissolution proceedings leaving spousal support and property issues to be tried is not

final].) Stephanie did not request the partial judgment be certified for appeal under Family Code section 2025.

In her brief statement of appealability, Stephanie cites *In re Marriage of Skelley* (1976) 18 Cal.3d 365 for the proposition the partial judgment is a final, appealable judgment on the issues of child support and attorney fees. In *In re Marriage of Skelley*, the California Supreme Court held a temporary or pendente lite order reducing temporary spousal support is appealable because the order is a final disposition of a collateral issue. The collateral order doctrine is an exception to the "one final judgment rule." Under the collateral order doctrine, a direct appeal may be taken from an interlocutory order that is (1) collateral to the main issue, (2) dispositive of the rights of the parties as to the collateral matter, and (3) directs payment of money or performance of an act. (*Id*. at p. 368; *Sjoberg v. Hastorf* (1948) 33 Cal.2d 116, 119.) An order meeting these criteria is "substantially the same as a final judgment in an independent proceeding." (9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 60.)

Here, the partial judgment directs the payment of money and is dispositive of the parties' rights concerning child support and attorney fees and costs. But are child support and attorney fees collateral issues? The test in determining whether an order is collateral is whether the order is important and essential to the correct determination of the main issue. (*Lester v. Lennane* (2000) 84 Cal.App.4th 536, 561.) If the order is """a necessary step to that end,""" it is not collateral. (*Ibid.*) In *Lester v. Lennane,* the court held a temporary custody order in a paternity action was not collateral because custody was the only contested issue in the case aside from attorney fees and costs. (*Id*. at p. 562.)

Here, child support and attorney fees were not collateral issues. Child support and attorney fees were two of the main contested issues, the others being custody and visitation. In contrast, the order reducing temporary support pendente lite in *In re Marriage of Skelley, supra,* 18 Cal.3d 365 was collateral to a dissolution action because

determination of temporary support was not a necessary step to the determination of divorce. Because the partial judgment in this case resolved issues """"important and essential to the correct determination of the main issue""" (*Lester v. Lennane, supra,* 84 Cal.App.4th at p. 561), the partial judgment is not an order on collateral issues and is not appealable under the collateral order doctrine.

We can consider an appeal from a nonappealable order or judgment to be a petition for extraordinary writ if (1) the briefs and record before the court contain in substance all the elements required by rule 56 of the California Rules of Court for an original mandate proceeding and (2) there are extraordinary circumstances justifying the exercise of that discretionary power. (*Morehart v. County of Santa Barbara*, *supra*, 7 Cal.4th at pp. 745-747.) We invited the parties to submit letter briefs addressing whether we should treat the appeal as a petition for a writ of mandate. Stephanie submitted a letter brief but did not request we treat her appeal as a petition for a writ of mandate. Rather, Stephanie argued the partial judgment is appealable under the collateral order doctrine, an argument we have rejected. Derek's letter brief identified the findings and order after hearing, which deals with child support, and asserted "[n]o appeal from that Judgment was taken." Neither Stephanie nor Derek apprised us of the order regarding child custody entered on August 23, 2002.

At oral argument, Stephanie's counsel finally requested we treat the appeal as a petition for a writ of mandate, but identified no extraordinary circumstances justifying such exercise of our discretion. We find no such extraordinary circumstances. Stephanie can challenge the child support order and attorney fees award by appealing from a final judgment—when one is entered. The findings and order after hearing entered on August 23, 2002 is not a judgment, as Derek contends, because it addresses only child support.

DISPOSITION

The appeal is dismissed without prejudice. Derek Worden shall recover his costs incurred on appeal.

FYBEL, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

ARONSON, J.